Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Developing a Unified Intercarrier Compensation Regime	))))))	CC Docket No. 01-92

REPLY COMMENTS OF T-MOBILE USA, INC.

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SUMMARY

Widespread support within the industry exists for immediate intercarrier compensation reform. Even so, many commenters support proposals that would maintain at least some level of intercarrier compensation. These proposals fail to achieve the Commission's stated goals of encouraging efficiency and competition, preserving universal service, maintaining competitive and technological neutrality, and reducing regulatory intervention.

Only a unified, default bill-and-keep regime with competitively neutral interconnection rules, as proposed by T-Mobile, CTIA, and other parties, can offer maximum benefits for consumers, while achieving all of the Commission's goals for intercarrier compensation reform. Under this approach, the complex and inefficient intercarrier compensation system that exists today would be replaced by a unified, default bill-and-keep regime that eliminates call origination and termination charges for all telecommunications traffic, regardless of the jurisdictional nature of the traffic, the service provided, or the technology used. Bill-and-keep, in conjunction with properly structured interconnection rules, would permit an equitable allocation of network costs, minimize arbitrage opportunities, and lead to lower rates for consumers.

To mitigate the cost burden of serving high-cost areas, the Commission also should adopt a unified high-cost universal service support mechanism based upon the forward-looking costs of providing service using efficient and least-cost technology. Competitive neutrality requires that high-cost universal service support be fully portable to all competitive carriers providing the supported services.

The Commission has full authority under Sections 201, 251 and 252 of the Communications Act to implement a unified, default bill-and-keep regime and to adopt neutral interconnection rules that, among other things, require ILECs to provide tandem transit service at

rates based upon forward-looking costs. To the extent necessary, the Commission should exercise its authority to preempt state regulation of intrastate access charges and other intercarrier compensation rates.

Although the record provides support for a unified universal service support mechanism, some commenters would limit high-cost universal service support to ILECs, rather than allowing support for all carriers that can provide the covered services. Rather than protecting consumer interests, these measures would protect a limited class of service providers, perpetuating opportunities for arbitrage, anticompetitive behavior, and inefficiencies. More fundamentally, these measures undermine the purpose of Section 254 of the Communications Act, which is to protect consumers, not corporations.

RLECs and other commenters also argue for a right to "revenue neutrality" and recommend the implementation of "make whole" revenue replacement funds. The Commission should reject this brazen claim for corporate entitlements because it would harm consumer welfare and reward inefficient operations. Revenue guarantees fail to provide carriers with incentives to introduce pro-consumer innovations that would flow from a bill-and-keep regime and a forward-looking, least-cost universal service regime. Further, suggestions to recover lost intercarrier compensation revenue through the universal service program or similar mechanism will overburden the already strained universal service program, threatening its long-term viability. A unified universal service support mechanism based upon forward-looking costs will mitigate the cost burden for carriers serving high-cost areas.

Finally, the Commission should affirm once and for all wireline carriers' obligation to handle wireless carrier traffic in a competitively neutral and efficient manner. Specifically, the Commission should reaffirm the intraMTA rule and wireline carriers' obligation to load wireless numbers with different rating and routing points and to follow existing dialing parity rules. Competitive neutrality requires that wireless and wireline carriers have the same rights to recover access and termination charges.

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T-Mobile USA, Inc. ("T-Mobile") submits its reply comments regarding the Further Notice of Proposed Rulemaking in the above-captioned proceeding ("FNPRM").[1]

I. INTRODUCTION

The record confirms that the intercarrier compensation system, which affects rate payers and service providers alike, is irretrievably broken and that comprehensive reform of the system is long overdue. Very few commenters, however, support proposals that satisfy all of the Commission's and independent wireless carriers' reform principles based on the goals of efficiency, equity and competition. Opponents of meaningful reform seek to preserve at least some level of intercarrier compensation. Doing so, however, would perpetuate the inefficiencies and inequities of the current system and would deprive consumers of the benefits of true reform.

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[1] *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) ("*FNPRM*").

Certain commenters also seek to maintain "revenue neutrality." Revenue neutrality, however, benefits only certain carriers, not consumers, and would be achieved at the expense of efficiency, competitive neutrality, and stabilization of the universal service fund ("USF"). Some commenters also insist that the new "make whole" support mechanisms they propose should not be available to competitive carriers providing the supported services, thereby violating the principle of competitive neutrality as well as encouraging inefficiency.

As T-Mobile and other wireless parties have shown, only a unified, default bill-and-keep type of regime, supported by neutral interconnection rules and a unified high-cost universal service support mechanism based upon forward-looking costs, can achieve all of the Commission's goals for intercarrier compensation reform, while offering maximum benefits for consumers. Bill-and-keep is the only competitively neutral solution that can foster robust competition and eliminate inefficiencies inherent in the existing intercarrier compensation system.

II. THE RECORD DEMONSTRATES THAT A UNIFIED, DEFAULT BILL-AND-KEEP REGIME OFFERS SUBSTANTIAL CONSUMER BENEFITS

As wireless carriers, the Intercarrier Compensation Forum ("ICF"), Qwest, and other commenters have demonstrated, a unified, default bill-and-keep system is the most rational intercarrier compensation system, and would enhance efficiency and competition by promoting carrier self-reliance and reducing inefficient investment.[2] These parties also detail the

[2] *See, e.g.,* T-Mobile Comments at 10-19; ICF Comments at 29; Qwest Comments at 19-22; U.S. Cellular Comments at 5-6. Cites and textual reference to initial comments filed in response to the *FNPRM* generally will be abbreviated in this manner throughout.

administrative benefits of bill-and-keep, including the end of intercarrier rate regulation, tracking, billing and collection.[3]

Opposition to bill-and-keep is generally framed along two lines of argument, both of which are interrelated and premised on the "calling party network pays" concept. Under the first line of argument, opponents argue that the originating carrier should pay for the cost of terminating a call because the calling party derives most, if not all, of the benefit from the call.[4] Under the second line of argument, opponents contend that bill-and-keep is unsuitable because it violates cost-based pricing principles and prevents terminating carriers from recouping the costs incurred when traffic is imbalanced.[5] As discussed below, none of these arguments has merit.

A. Bill-And-Keep Properly Accounts For The Mutual Benefits Received By The Calling And Called Parties From The Delivery Of A Call

As commenters such as CTIA demonstrated, both parties to a call benefit from and thus "cause" the occurrence of the call.[6] Accordingly, regardless of whether termination costs are usage-sensitive or whether traffic is imbalanced, both parties' networks should share the costs of the call. Moreover, each party's carrier can recover its costs from its end user under a bill-and-keep regime. Although bill-and-keep opponents challenge the well-accepted premise that both

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[3] *See, e.g.*, T-Mobile Comments at 13-14; U.S. Cellular Comments at 6.

[4] *See, e.g.*, Letter from Michael W. Fleming, Counsel to Pac-West Telecomm, Inc., to Marlene R. Dortch, Secretary, FCC (May 23, 2005), attachment, Lee L. Selwyn and Helen E. Golding, *Intercarrier Compensation in a Diverse Competitive Environment* at 32-37 (May 2005) ("Pac-West Study").

[5] *See, e.g.*, Rural Alliance Comments at 25-34 and App. B, Dale Lehman, *The Economic Cost of Mandatory Bill and Keep* ("Lehman Paper"); Pac-West Comments at 42-45 and Pac-West Study at 18-21, 37-45; BellSouth Comments at 10-12.

[6] *See* CTIA Comments at 15-17; *FNPRM*, App. C (Staff Report), 19 FCC Rcd at 4781-93.

the calling and called parties benefit from the delivery of a call, they offer no objective data or other evidence to support their position.[7] Moreover, the relative benefits received by the calling and called parties need not be measured precisely. It is reasonable to assume that when a consumer purchases telephone service from a carrier, the expectation is that the service purchased will allow the consumer to initiate *and* receive calls. In fact, consumers reasonably would be expected to discontinue service if the service no longer allowed them to receive calls. Thus, it is logical to assume that an end user is willing, and indeed expects, to pay a reasonable fee in order to receive calls, regardless of the origination point of the call.[8]

B. Bill-And-Keep Does Not Impose Disproportionate Costs Upon Terminating Carriers

Some opponents argue that bill-and-keep is inappropriate, particularly where the costs for carrying traffic are relatively more expensive for certain carriers such as rural local exchange carriers ("RLECs").[9] Carriers, however, can work to reduce their network costs through the use of more efficient and cost-effective technologies.[10] Additional targeted and specific universal service mechanisms also can be applied to mitigate the cost burden for RLECs and other carriers, as discussed in Section II(C) below.

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[7] *See, e.g.,* Pac-West Study at 32-37.

[8] *See also* U.S. Cellular Comments at 7.

[9] *See, e.g.,* CenturyTel Comments at 17-24; Nat'l Telecommunications Cooperative Ass'n ("NTCA") Comments at 17-23.

[10] For example, as T-Mobile previously noted, Yukon Telephone Company recently announced that it replaced its antiquated Class 5 switches with "soft switches" that cost one-fifth of the price of the legacy equipment. *See* T-Mobile Comments at 32-33.

Furthermore, the argument that terminating carriers incur substantial incremental costs that cannot be recovered under bill-and-keep erroneously assumes that network costs are largely usage-sensitive. Although the National Telecommunications Cooperative Association ("NTCA") submitted a study purportedly demonstrating that switching costs are usage-sensitive, the study in fact reveals that switching and other network costs are "lumpy,"[11] *i.e.*, incurred in a "stair-stepping" manner to add more capacity. [12] In other words, when a carrier's traffic reaches a certain level, it may be necessary to purchase and install an entirely new, larger switching mechanism. NTCA and other opponents, however, fail to demonstrate that each call imposes any substantial incremental cost, at least until traffic volume reaches a level requiring expansion of network capacity. In fact, until expansion of network capacity is required, the cost per call should decrease.

When traffic volumes reach a level requiring expansion of network capacity, the amount of the additional capital expenditure required can vary widely based on the carrier's choice of network design and technology, as well as the costs and scalability of the chosen technology.[13] Because the carrier determines its choice of network design and technology, it also can control and minimize its network costs. An efficiently operating carrier should be able to recover these costs through reasonable end-user rates if the carrier utilizes efficient network design and technology.

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[11] Lehman Paper at 12.

[12] NTCA Comments, attachment, Larry Thompson and John De Witte, *Traffic Sensitivity of Telephone Switching Equipment* at 17 (May 2005). *See also id.* at 14; BellSouth at 22-26.

[13] For example, the expense of purchasing, installing, and maintaining a legacy class 5 switch is significantly greater than that of a packet-based soft switch. *See* T-Mobile Comments at 32-33 (discussing Yukon Telephone Company's decision to replace Class 5 switches with substantially less expensive "soft switches").

Moreover, expansion of network capacity is driven by increases in traffic volumes, generally the result of a carrier's expanding customer base and traffic demand. Since these customers expect both to make and receive calls, they are a direct cause of the increase in traffic load on the carrier's network and therefore should be expected to pay for these services. Expansion of network capacity also allows carriers to offer service at lower average costs and to increase revenues by serving additional customers, thus resulting in greater efficiencies. Because bill-and-keep allows carriers to recover their costs from their customers and, if appropriate, from a unified universal service fund based upon forward-looking costs, increases in traffic volume will provide additional revenue opportunities for carriers. Consequently, if a carrier employs the proper network technology and business model, any increase in network costs should be more than offset by an even larger increase in revenues.

C. Bill-And-Keep Allows Carriers To Recover Their Termination Costs Efficiently

The record supports allowing carriers greater flexibility in recovering their costs from end users. As wireless carriers and the National Cable & Telecommunications Association ("NCTA") note, carriers under a bill-and-keep system should be allowed to recover their costs from end users in the form of higher subscriber line charges ("SLCs").[14] CenturyTel, however, seeks to deny carriers flexibility in recovering costs from end users through SLC increases, and several commenters suggest that significant reductions in intercarrier compensation should be

[14] *See* Nat'l Cable & Telecommunications Ass'n ("NCTA") Comments at 10; Nextel Communications Comments at 24-25; U.S. Cellular Comments at 7; Verizon Wireless Comments at 26-27; BellSouth Comments at 27-32; Pac-West Comments at 49; Cox Comments at 12-14; ICF Comments at 27-28.

permitted only if those reductions are matched by increases in the USF or USF-type support.[15] This would impose an unnecessary burden on an already strained universal service system and perpetuate inefficiencies resulting from implicit subsidies.

Opponents contend that bill-and-keep does not promote efficiency or neutrality because it allows "free use" of a terminating carrier's network and would lead to infrequent users shouldering a disproportionate burden of overall costs.[16] Use of the terminating carrier's network, however, is not "free" if the carrier can charge its own customers for that use. Under T-Mobile's proposal, terminating carriers could recover their costs from customers through reasonable methods.[17] For example, a local exchange carrier ("LEC") could offer usage plans, much like those offered by CMRS providers, in which a wireline customer can choose a flat rate for the desired bundle of minutes and services, thus allowing him to manage more efficiently his monthly telephony expenses. The consumer would not help subsidize other customers, but rather would pay for the services needed.

In claiming that shifting the total costs of terminating calls to end users will dramatically increase consumer rates, opponents fail to consider the totality of the end user's telecommunications expenditures. As the ICF correctly notes, any increase that may occur in,

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[15] *See* CenturyTel Comments at 10-16; ICF Comments at 34-36; USTA Comments at 35-37; Cincinnati Bell Comments at 10-12; Frontier Comments at 14-15; CenturyTel Comments at 16-32; Comments of the Coalition for Capacity-Based Access Pricing ("CCAP Comments") at 13, 20-22; Comments of John Staurulakis, Inc. ("JSI Comments") at 4-5; Minnesota Coalition Comments at 14, 27-29; NTCA Comments at 11, 26-27, 55-59; Rural Alliance Comments at 21, 73; TDS Comments at 9-10; Comments of General Communication, Inc. ("GCI Comments") at 5-6, 10-11; Ad Hoc Users Comments at 2-3.

[16] NTCA at 19. *See also, e.g.,* CenturyTel Comments at 19-20, 22-24; Lehman Paper at 2-4, 10-13.

[17] *See* T-Mobile Comments at 15-18.

for example, a customer's local charges should be offset by a corresponding or even larger reduction in the customer's long distance rates.[18] Moreover, the extent of any increase in the rates for a particular service can be minimized through the carrier's adoption of an efficient network topology and, in the case of high-cost areas, through implementation of targeted, forward-looking universal service support. Thus, under a bill-and-keep regime, a customer's total telecommunications expenditures reasonably would be expected to decrease or remain the same, while retail rates more accurately would reflect actual costs, rather than implicit subsidies.

D. Bill-And-Keep Will Minimize Opportunities To Game The System Or Engage In Arbitrage

Opponents offer no justification for the claim that bill-and-keep will enable carriers to game the system by allowing each carrier to locate its edge without regard to other carriers' responsibility to deliver traffic to it.[19] Although under T-Mobile's proposal, a terminating carrier can designate where it wants traffic delivered and likely will make a designation that will minimize internal network costs, all carriers will be equally free to make the same decisions. Thus, given these mutual rights and obligations, carriers have strong incentives to engage in give-and-take negotiations that will create mutually beneficial points of traffic exchange.

Opponents also argue that bill-and-keep will lead to arbitrage opportunities because originating carriers will overuse terminating carrier networks, thereby forcing the latter to over-build their networks.[20] The Commission, however, correctly rejected a similar argument in the

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[18] *See* ICF Comments 28; SBC Comments at 12.

[19] *See, e.g.,* Lehman Paper at 5-6.

[20] *See, e.g.,* CCAP Comments at 11-12; Lehman Paper at 2-4, 10-12.

CLEC Access Charge Recon. Order.[21] Specifically, the Commission declined to set a separate access charge for originating 8YY traffic and rejected claims that competitive LECs ("CLECs") encouraged customers to increase toll-free calling by offering commissions. The Commission found that end users, not carriers, generated calls and that the commissions did not "create any incentive for those actually placing the calls artificially to inflate their 8YY traffic."[22] The same can be said for other types of calls. In other words, an end user determines the amount and types of calls placed, and a carrier generally lacks the ability to influence its end users to artificially inflate traffic terminated on another carrier's network.

As T-Mobile and CTIA have advocated, with the properly structured interconnection rules, bill-and-keep will minimize arbitrage opportunities and lead to lower retail rates for consumers' overall telecommunications services. The edge interconnection rules in the METE proposal will encourage carriers to negotiate mutually beneficial points of traffic exchange.[23] Furthermore, opportunities for carriers to game the rules of intercarrier compensation to their advantage by relying upon a specific type of traffic (*e.g.,* ISP-bound) or technology (e.g., VoIP) will wane as the incentives to do so disappear. For example, CLECs likely will find less benefit in focusing their business models largely on terminating calls to customers. In the long run, significant sums of money currently spent on litigation can be redirected to more constructive endeavors, such as network improvements. Since carriers will recover their operating costs from end users, they will seek to implement cost-effective, technologically advanced networks that

[21] *See Access Charge Reform*, Eighth Report and Order, 19 FCC Rcd 9108 (2004) ("*CLEC Access Charge Recon. Order*").

[22] *Id.* at 9142-43.

[23] *See* CTIA Comments at 22-24.

reduce expenses. If they do not, they will realize reduced earning margins, and, where competitive choice exists, customers will switch to carriers that offer comparable or superior services at lower rates. In the long run, bill-and-keep should provide accurate pricing signals to consumers and ultimately lower their telecommunications expenditures.

E. Bill-And-Keep Will Facilitate More Efficient Rural Investment

CenturyTel and other RLECs claim that bill-and-keep would inhibit rural telecommunications investment,[24] but the record demonstrates significant rural network inefficiencies that hobble the current intercarrier compensation regime with unnecessary costs imposed on all carriers and consumers. Notably, NTCA cites data showing RLECs' disproportionate dependence on USF and access revenues and the impact that bill-and-keep would have on RLEC revenues.[25] This data, however, demonstrates the need to reform the system by adopting a bill-and-keep regime that will eliminate legacy inefficiencies. Because revenues derived from inflated intercarrier compensation charges and universal service support have little or no connection to the costs incurred to provide service in a high-cost area, RLECs lack the proper incentives to respond quickly and fully to the demands of their customers. The continuation of RLEC dependency on intercarrier compensation revenue and universal service support will postpone the changes necessary to promote increased efficiency, competition, and innovation. By adopting a bill-and-keep regime that does not depend upon USF funding to guarantee revenue recovery, the Commission will enable consumers to determine whether their service provider is providing high-quality, cost-efficient service. The Commission also will

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[24] *See, e.g.*, CenturyTel Comments at 17-24; NTCA Comments at 17-23.

[25] *See* NTCA Comments at 18-27.

ensure that service providers receive appropriate marketplace signals and are responsive to consumer demands.

III. PROPOSALS SEEKING TO PRESERVE SOME LEVEL OF INTERCARRIER COMPENSATION WOULD SACRIFICE THE INCREASED EFFICIENCY, COMPETITION, AND INNOVATION RESULTING FROM BILL-AND-KEEP

Proposals seeking to retain some level of intercarrier compensation would perpetuate the inefficiencies and inequities of the current system and thus should be rejected. For example, several commenters urge the Commission to maintain intercarrier compensation rates based upon embedded costs.[26] As BellSouth acknowledges, however, an embedded cost approach would undermine the goal of uniformity and continue to reflect each carrier's inefficiencies.[27]

Most commenters support at least some degree of unification of the intercarrier compensation system and, in particular, agree that interstate and intrastate rates should be equivalent.[28] A number of parties, however, propose to maintain arbitrary regulatory distinctions that create additional arbitrage opportunities and unnecessary complexity for an intercarrier compensation system that requires meaningful reform. For example, as discussed in Section IV(A) below, the ICF and NTCA advocate special interconnection and compensation rules favoring RLECs to the detriment of all other carriers. Additionally, NARUC proposes default

[26] *See* Rural Alliance Comments at 34-47; CCAP Comments at 18-19; Colorado Telecom Association Comments at 25-27; JSI Comments at 5-11; NTCA Comments at 27-34.

[27] BellSouth Comments at 14-15.

[28] *See, e.g.,* ICF Comments at 6, 10-13, 25-26; Western Wireless Comments at 6-7; USTA Comments at 12-13; Minn. Ind. Coalition Comments at 23-25; CCAP Comments at 15, 25; JSI Comments at 12-14; BellSouth Comments at 17, 39-50; CompTel/ALTS Comments at 4; NCTA Comments at 3; Pac-West Comments at 5, 12; Rural Alliance Comments at 12; Sprint Comments at 14; Verizon Comments at 4, 6.

termination rates that vary depending on the size of the wire center terminating the call.[29] The EPG Plan endorses capacity-based compensation rates that would apply only to direct interconnection arrangements and not to local traffic.[30]

Even BellSouth, which criticizes other proposals for maintaining arbitrary distinctions, submits a plan that creates its own set of arbitrary distinctions. Specifically, BellSouth proposes termination rates that that only a "local network provider" may collect and that vary depending on whether traffic is switched through a tandem office or end office.[31] Under this approach, wireless and other carriers that do not qualify as "local network providers" with tandem or end offices apparently would not be eligible to receive any intercarrier compensation. Because this proposal would reward only those wireline carriers that maintain legacy network architectures, it is inefficient and not competitively neutral.

Inevitably, the various proposals to preserve some level of intercarrier compensation fail to produce uniform, nondiscriminatory rates because they all seek to maintain regulatory distinctions based upon the nature of the service, the type of service provider, and other irrelevant factors. These distinctions will encourage carriers to engage in arbitrage and to migrate traffic to more cost-efficient IP and other networks that are not saddled with intercarrier compensation costs. This would force wireline carriers that depend upon intercarrier

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[29] *See* National Association of Regulatory Utility Commissioners Intercarrier Compensation Proposal at 4-5, attached as Appendix C to Letter from Robert B. Nelson, Elliott G. Smith, and Ray Baum, NARUC, to Kevin Martin, Chairman, Federal Communications Commission, CC Docket No. 01-92 (May 18, 2005).

[30] BellSouth Comments at 13, describing Comprehensive Plan for Intercarrier Compensation, attached to Letter from Glenn H. Brown, Facilitator of the Expanded Portland Group, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Nov. 2, 2004) ("EPG Plan"); *FNPRM*, 20 FCC Rcd at 4708.

[31] BellSouth Comments at 8-18.

compensation and universal service revenues to raise their intercarrier compensation rates and demand for universal service support, thus increasing the costs imposed upon a dwindling pool of carriers required to pay intercarrier compensation rates or contribute to USF. Without reform, intercarrier compensation and universal service funding inevitably will become obsolete and unsustainable as carriers look for arbitrage opportunities and migrate traffic away from legacy networks. Only a bill-and-keep regime that effectively sets a compensation rate of zero can achieve competitive neutrality, maximize efficiency, and eliminate arbitrary distinctions and arbitrage opportunities.

IV. THE COMMISSION SHOULD ADOPT EFFICIENT, COMPETITIVELY NEUTRAL INTERCONNECTION RULES

A. Special Interconnection Rules For RLECs Are Anticompetitive And Inefficient

As T-Mobile, CTIA, and others noted, meaningful intercarrier compensation reform requires that the Commission adopt default interconnection rules that are competitively neutral and effective in preventing carriers with greater bargaining power from imposing onerous interconnection terms on their competitors.[32] Other commenters, however, advocate special interconnection and compensation rules for various service providers that merely perpetuate the inefficiencies of the current system and hinder competition. For example, the ICF endorses preferential interconnection rules that "are explicitly designed to protect universal service in rural America by establishing modified default rules to apply to networks operated by [RLECs]."[33] NTCA also proposes special rules for RLECs that are even more discriminatory than the ICF's

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[32] *See, e.g.,* T-Mobile Comments at 20; CTIA Comments at 21; U.S. Cellular Comments at 4.

[33] *See* ICF Comments at 35.

proposed rules.[34] Notably, NTCA proposes to require non-RLECs that interconnect with a RLEC to bear the RLEC's intranetwork costs outside the local calling area of the RLEC's end user, in addition to all internetwork transport costs.[35]

The various proposals to adopt preferential interconnection rules for specific carriers will not offer any consumer benefits and will stifle competition in rural areas that are most in need of competitive alternatives.[36] As the U.S. Court of Appeals for the Third Circuit observed just last week,

> Interconnection is critically important to a competitive local exchange market. Without it, customers of one carrier – e.g., the ILEC, … – would not be able to call customers of another carrier … that has recently initiated service in that same area.[37]

Preferential interconnection rules serve to protect carriers with market power from competitive forces, while requiring competitors with more efficient technologies to replicate inefficient legacy networks and to pay RLECs to maintain inefficient networks. These rules also create arbitrage opportunities by providing incentives for carriers to seek preferential treatment. Moreover, they add unnecessary complexity to intercarrier compensation arrangements.[38]

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[34] *See* NTCA Comments at 45-49.

[35] *Id.*

[36] *See* Nextel Partners Comments at 18-22; T-Mobile Comments at 25.

[37] *SBC Inc. v. FCC*, No. 03-4311 (3rd Cir. July 14, 2005), slip op. at 5.

[38] *See also* Verizon Wireless Comments at 8; U.S. Cellular Comments at 10-14; Western Wireless at 12; Time Warner Joint Comments at 43-45.

B. The Commission Should Require ILECs To Provide Tandem Transit Service

To promote network efficiency, incumbent LECs ("ILECs") should be required to offer tandem transit service. For most carriers, including wireless carriers, tandem transit service is crucial to their ability to offer cost-effective service nationwide and particularly to rural areas where direct interconnection with every RLEC is not feasible. As Pac-West demonstrates, requiring ILECs to offer tandem transit service will facilitate network interconnections and limit ILEC control over bottleneck facilities.[39] In the absence of this requirement, originating carriers will have to choose between the costly options of entering into direct interconnections with other carriers and obtaining bottleneck transit services from ILECs at substantially higher rates, both of which would lead to increased retail prices. As a result, many carriers could be forced to withdraw from rural and other markets that lack the traffic volumes to warrant direct interconnections or payment of higher transit rates.

As several commenters correctly note, the Commission has authority under Sections 201(a), 251, and 332 of the Communications Act to require ILECs to provide tandem transit service and to regulate the rates for that service.[40] Specifically, the Commission has broad authority under Section 201(a) to require carriers to establish "physical connections" with other carriers and "through routes," as well as to adopt regulations governing those "through routes."[41] Additionally, Section 251(a) requires telecommunications carriers to "interconnect directly or

[39] *See* Pac-West Comments at 21-24.

[40] Nextel Communications Comments at 4-18; Leap Wireless Comments at 11-13; Cox Comments at 14-22; PacWest Comments at 20-24.

[41] 47 U.S.C. § 201(a).

indirectly with facilities and equipment of other telecommunications carriers."[42] Section 251(c)(2) also requires ILECs to provide interconnection for the "transmission and routing" of local exchange traffic, regardless of whether the traffic is originated or terminated by the ILEC, the requesting carrier, or a third party.[43] Furthermore, Section 332(c)(1)(B) authorizes the Commission to require common carriers to establish physical connections with CMRS providers.[44]

In addition to its authority to require ILECs to provide tandem transit services, the Commission also has ample authority to require cost-based rates for those services. This authority arises from Section 201(b) of the Communications Act, which requires the Commission to ensure just and reasonable rates for telecommunications services. Moreover, Sections 251(c)(2) and 251(d)(1), which collectively require ILECs to provide interconnection for the "transmission and routing" of local calls at cost-based rates, permit the Commission to require transit rates based upon forward-looking costs. Section 332 also authorizes the Commission to impose those rates.[45] Unless transit rates are required to be based upon forward-looking costs, the full benefits of intercarrier compensation reform will not be realized. This is

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[42] *Id.* § 251(a). Although the Wireline Competition Bureau previously declined to address whether Section 251 imposes an ILEC obligation to provide tandem transit service, it nonetheless suggested that an ILEC may have a duty to provide transit service under Section 251(a). *See Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd 27039, 27101-02 (WCB 2002).

[43] 47 U.S.C. § 251(c)(2).

[44] *Id.* § 332(c)(1)(B); *see also id.* § 152(b).

[45] *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997), *vacated and remanded in part on other grounds sub nom. AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999) ("*Iowa*").

particularly true in the majority of instances in which pricing for ILEC-provided transit services is not constrained by effective competition. The Commission thus should adopt a default transit rate based upon forward-looking costs.

V. THE COMMISSION SHOULD NOT MAINTAIN REVENUE NEUTRALITY AT THE EXPENSE OF EFFICIENCY, COMPETITIVE NEUTRALITY, AND USF STABILIZATION AND CONSUMER BENEFITS

Although the term “revenue neutrality” sounds benign, when used by ILECs, it is meant as an entitlement to secure revenue and profit without regard to consumer welfare. ILECs argue that they must have the right to recover any revenue “lost” due to intercarrier compensation reform through the USF or a similar funding mechanism. Granting this entitlement, however, would sacrifice consumer welfare and efficiency gains that otherwise would result from the Commission’s efforts to reform intercarrier compensation and stabilize the universal service program. Demands for a new USF or similar revenue replacement mechanisms violate the universal service principle of competitive neutrality and should be rejected.

A. Revenue Neutrality Encourages Continued RLEC Inefficiencies And Overburdens The Already Strained Universal Service Fund

As demonstrated throughout the comments, the existing intercarrier compensation and universal service regimes are characterized by significant inefficiencies that harm consumers by hindering their ability to acquire new, affordable services and burdening them with the costs of inflated universal service subsidies. The current regimes provide no incentive for carriers – particularly RLECs – to operate efficiently. Rather, RLECs are reimbursed through the USF for their operational costs, regardless of whether they use efficient and cost-effective technologies or manage their businesses in a fiscally responsible manner. As a consequence, the USF is increasing uncontrollably to an unsustainable level.[46]

T-Mobile, CTIA, and other commenters urge the Commission to ensure that the USF is used for the benefit of consumers by promoting the availability of quality telecommunications services at just, reasonable and affordable rates to all Americans.[47] Allocating high-cost universal service support through a single, unified forward-looking support mechanism based upon the most efficient technology available is carrier-neutral and is the best means to accomplish this goal.[48] In contrast, RLECs and other commenters in effect assert that the universal service mechanism exists not to ensure consumer access to quality and affordable telecommunications services, but rather only to ensure a permanent revenue stream to carriers, by arguing that "lost" intercarrier compensation revenue must be recoverable through the USF or a new mechanism that works in a similar manner.[49]

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[46] T-Mobile Comments at 29-33; CTIA Comments at 31-34; Nextel Communications Comments at 28-29; Western Wireless and SunCom Wireless Comments at 40; Qwest Comments at 5; Time Warner Joint Comments at 51; Ad Hoc Users Comments at 15-16.

[47] T-Mobile Comments at 4, 15-16, 28-29, 33; CTIA Comments at 31-34, 53-55; Nextel Communications Comments at 25-28; Western Wireless and SunCom Wireless Comments at 38; Cox Comments at 11-12; Pac West Joint Comments at 7-8; Ad Hoc Users Comments at 14.

[48] T-Mobile Comments at 27-36; CTIA Comments at 31-39; Western Wireless and SunCom Wireless Comments at 41-43; KMC and Xpedius Comments at 32-33.

[49] ICF Comments at 34-36; USTA Comments at 35-37; Cincinnati Bell Comments at 10-12; Frontier Comments at 14-15; CenturyTel Comments at 16-32; CCAP Comments at 13, 20-22; JSI Comments at 4-5; Minnesota Coalition Comments at 14, 27-29; NTCA Comments at 11, 26-27, 55-59; Rural Alliance Comments at 21, 73; TDS Comments at 9-10; GCI Comments at 5-6, 10-11; Ad Hoc Users Comments at 2-3.

NASUCA accurately notes that it is not the purpose of regulation to guarantee revenue recovery.[50] No carrier has made the necessary showing establishing a legal right to revenue neutrality as a part of any intercarrier compensation reform.[51] In fact, there is no provision of the Act or Commission rules that supporters of revenue neutrality can cite that guarantee those earnings. Section 254(b) of the Act specifically rejects this assertion by designating *consumers*, and not their *carriers*, as the beneficiaries of the universal service support mechanism.[52] As the U.S. Court of Appeals for the Fifth Circuit confirmed:

> The Act does not guarantee all local telephone service providers a sufficient return on investment…. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well.[53]

The Commission must reject arguments that carriers will not be able to provide telecommunications services if they lose intercarrier compensation. There are equitable means other than expanding existing or creating new funding mechanisms to replace lost revenue, such as recovering them from end users.[54]

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[50] NASUCA Comments at 28-29; 31-34.

[51] Ad Hoc Users Comments at 14-16; Nextel Communications Comments at 19, 21; Western Wireless and SunCom Wireless Comments at 45; NCTA at 8-9; Time Warner Joint Comments at 53.

[52] 47 U.S.C. § 254(b).

[53] *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620, 621 (5th Cir. 2001) ("*Alenco*").

[54] USTA acknowledges that so long as carriers have "equitable means to recover [intercarrier compensation] revenue" they will be able to "build, maintain, upgrade, and expand the networks upon which consumers rely for all their communications needs." USTA Comments at 35.

Further, ILECs have not presented any evidence that "make-whole" funding is necessary for consumers to obtain quality and affordable telecommunications services.[55] The Rural Iowa Independent Telephone Association recently filed an *ex parte* demonstrating the high rate of broadband penetration in rural Iowa.[56] In fact, LEC deployment of xDSL technologies in rural Iowa communities has outpaced deployment in non-rural Iowa communities, and ADSL deployment increased more rapidly in Iowa than it did nationwide from June 2003 to June 2004.[57] Moreover, many RLECs and other small ILECs are able to fund competitive operations outside their own local service territories. Operating as CLECs, they are competing against RBOCs and other large ILECs, often using VoIP technology.[58] These are not the activities of firms in need of subsidies.

Guaranteeing revenue neutrality also eliminates any incentives for carriers to operate efficiently and ensures that the current regime's legacy monopolistic inefficiencies are never ending.[59] For example, USTA's Access Restructure Mechanism ("ARM"), the High-Cost Connection Fund ("HCCF") proposed by the Coalition for Capacity-Based Access Pricing ("CCAP"), the funding approach proposed by John Staurulakis, Inc. ("JSI"), and NTCA's

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[55] Nextel Communications Comments at 20.

[56] Letter from Thomas G. Fisher to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (July 1, 2005), attachment, Iowa Utilities Board, *Assessing High-Speed Internet Access in the State of Iowa: Fourth Assessment* (Dec. 2004) ("IUB Assessment").

[57] IUB Assessment at 6, 15-16, 23.

[58] Charlotte Wolter, *Telco Colonialists: small ilecs conquer new territories with voip*, xchange (June 1, 2005), *available at* http://www.xchangemag.com/article/561services2.html.

[59] Nextel Communications Comments at 19-21; Western Wireless and SunCom Wireless Comments at 44; Cox Comments at 5, 11-12; Pac West Joint Comments at 45-46, 49-50; NCTA Comments at 8-9; XO Comments at 16-20.

Residual Access Cost Recovery Mechanism ("RACRM") automatically replace all revenue lost as a result of reform with no other showing of need or costs. These parties simply advocate replacing the revenue stream from intercarrier compensation with revenue from universal service. This proposal cements in place the existing inefficiencies and is in every respect contrary to the Commission's goal of encouraging high-cost carriers to implement innovative technologies and operate more effectively.[60]

Moreover, the already burdened universal program ultimately may collapse by adding a new revenue recovery fund or increasing the USF. As Cincinnati Bell notes, "replacing lost access revenue with universal service subsidies may be a worse cure than the disease."[61] The record is replete with evidence that without reform the USF will continue to expand and the universal service fees consumers pay will continue to increase.[62] Imposing excessive universal service fees on customers "can itself violate the Act" because they cause end user rates "unnecessarily to rise, thereby pricing some consumers out of the market."[63] Adopting revenue replacement funds, regardless of how their sponsors attempt to characterize them (*e.g.*, USTA's proposed ARM, CCAP's proposed HCCF and NTCA's proposed RACRM), has the same effect

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[60] *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 19613, 19617, 19619 (2001).

[61] Cincinnati Bell Comments at 12-13.

[62] CTIA Comments at 54; *see also* T-Mobile Comments at 29-33; Nextel Communications Comments at 28; Western Wireless and SunCom Wireless Comments at 45; Cox Comments at 11-12; KMC and Xpedius Comments at 38-39; Ad Hoc Users Comments at 15-16.

[63] *Alenco*, 201 F.3d at 620; *see also Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8900 (1997) ("*USF Order*") (subsequent history omitted).

as the creation of a new universal service program. In each case, consumers ultimately bear all of the costs of the new funds.

The Commission should reject ILECs' lobbying efforts for additional universal service support that is beyond current universal service capabilities.[64] If the Commission adopts a reform plan that results in "lost" revenue, carriers have the ability to recover that revenue directly from their own end user customers.[65] The USF will become unsustainable if the Commission "re-sizes and uncaps" the high-cost funds as RLECs like CenturyTel suggest.[66] The Commission must therefore reject arguments that revenue replacement mechanisms will not harm the universal service program.[67]

The Commission also must deny RLECs' claims that rural high-cost support should be based upon a wireline carrier's embedded costs.[68] Using embedded costs to allocate universal service support would "discourage prudent investment planning because carriers could receive support for inefficient as well as efficient investments…. [T]he use of embedded cost to calculate universal service support would lead to subsidization of inefficient carriers at the

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[64] Qwest Comments at 8.

[65] T-Mobile Comments at 12-13, 15; CTIA Comments at 10, 12-13; Nextel Communications Comments at 24-25; Western Wireless and SunCom Wireless Comments at 22; Qwest Comments at 6-7; Pac West Joint Comments at 49-50; NCTA Comments at 9-11; XO Comments at 16-20.

[66] CenturyTel Comments at 8, 38-40; *see also* ICF Comments at 34-35.

[67] USTA Comments at 35. As discussed in Section II(C) above, additional universal service support based upon forward-looking costs can be applied to mitigate the cost-burden for carriers serving high-cost areas.

[68] CCAP Comments at 18-19, JSI Comments at 5-11; NTCA Comments at 32-33.

expense of efficient carriers and could create disincentives for carriers to operate efficiently."[69] Only by adopting a forward-looking, least cost universal service methodology will the Commission ensure that (1) universal service funding is tailored to the costs of serving consumers in high-cost areas; (2) growth of the USF is manageable; (3) competition can develop in rural areas; and (4) the universal service program is sustainable over the long term.[70] The Commission can advance its oft-repeated goal of fostering intermodal competition by adopting a fully portable, forward-looking, least-cost universal service regime.

B. ILEC Demand For New Non-Portable Support Mechanisms Are Discriminatory And Violate The Principle Of Competitive Neutrality

Proposals to establish non-portable revenue replacement mechanisms violate the Commission's stated goal of making the intercarrier compensation regime competitively neutral and must be rejected. For example, the non-portable ICF Transitional Network Recovery Mechanism ("TNRM"), NARUC Access Charge Transition Fund, USTA ARM, CCAP HCCF, the JSI proposed reform, the Minnesota Coalition proposed restructuring mechanism, the Rural Alliance recovery mechanism, and the NTCA RACRM discriminate against competitive carriers such as wireless service providers.[71] CCAP even proposes rolling some of the existing high-cost universal service programs into its proposed HCCF, thereby making them all non-portable.[72] JSI

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[69] *See, e.g., USF Order*, 12 FCC Rcd at 8901.

[70] *See, e.g.,* CTIA Comments at 6, 38-39, 48-49; U.S. Cellular Comments at 10; Western Wireless and SunCom Wireless Comments at 41-43; Leap Wireless Comments at 14-15.

[71] USTA Comments at 40-41; CCAP Comments at 20-22; Minnesota Coalition Comments at 29; NTCA Comments at 56-59; Rural Alliance Comments at 21, 73; Comporium Comments at 11-12; ERTA Comments at 2; ICF Comments at 34-36; JSI Comments at 4-5.

[72] CCAP Comments at 21-22.

would transition intrastate access revenues to interstate cost recovery mechanisms but not make such support portable because they "represent the recovery of a rate-of-return carrier's embedded costs."[73] NTCA also argues that universal service support should not be portable when it is based upon ILEC costs.[74] In effect, these parties argue that competitors are presumably too efficient to need support, which should only be available to inefficient incumbents.

The above examples demonstrate the inefficiencies created by discriminatory support mechanisms. Universal service support must "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[75] It must remain fully portable and available to all carriers, regardless of technology, that provide USF-supported services within their designated service areas.[76] The universal service program "must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal regulators, determines who shall compete for and deliver services to customers."[77] Discriminating against types of technologies or carriers maintains inefficient, legacy networks, hampers carriers' ability to compete against legacy incumbent

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[73] JSI Comments at 14.

[74] NTCA Comments at 56-59.

[75] *USF Order*, 12 FCC Rcd at 8801.

[76] CTIA Comments at 37-38; U.S. Cellular Comments at 4, 10; Western Wireless and SunCom Wireless Comments at 39-40, 45-46; Dobson Cellular and American Cellular Comments at 10; Allied Paging Comments at 10; Rural Cellular Association Comments at 4; Cox Comments at 5, 11; NCTA Comments at 8-9; Time Warner Joint Comments at 52-53; XO Comments at 16-20; CCG Comments at 9-10.

[77] *Alenco*, 201 F.3d at 616; *see also Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund*, 15 FCC Rcd 16227, 16231-32 (2000) ("It is difficult to see how a non-portable funding mechanism could be considered competitively neutral" because "a mechanism that offers non-portable support may give ILECs a substantial unfair price advantage in competing for customers.").

carriers, and denies consumers the benefits of more innovative networks and affordable services.[78]

Arguments claiming that revenue neutrality is necessary to sustain "carrier of last resort" obligations also should be rejected.[79] Carrier of last resort status does not exempt a carrier from operating efficiently and cost-effectively, but rather should encourage the carrier to do so.

VI. THE FCC HAS AUTHORITY TO IMPLEMENT A UNIFIED, DEFAULT BILL-AND-KEEP REGIME

T-Mobile agrees with the ICF that the Commission has authority under Sections 201, 251, and 252 of the Communications Acts to implement a unified, default bill-and-keep regime.[80] These statutory provisions authorize the Commission to regulate interstate and intrastate intercarrier traffic. Specifically, Supreme Court has found that the Commission's authority under Section 201(b)[81] extends to matters covered under the Telecommunications Act of 1996 that previously had been within the states' exclusive jurisdiction.[82] Additionally, contrary to the unsubstantiated contention of certain commenters,[83] the reciprocal compensation

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[78] CTIA Comments at 34-38; Nextel Communications Comments at 19-20; Western Wireless and SunCom Wireless Comments at 39-40.

[79] Frontier Comments at 14-15; Cincinnati Bell Comments at 8; CenturyTel Comments at 16-17, 35-39; CCAP Comments at 9-11; NTCA Comments at 57.

[80] ICF Comments at 38-48.

[81] Section 201(b) authorizes the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act." 47 U.S.C. § 201(b).

[82] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 377-86 (1999).

[83] *See, e.g.,* Rural Alliance comments at 139-156; Pac-West Comments at 7, 24; Time Warner Comments at 24-29; NYPSC Comments at 9-10.

provision of Section 251(b)(5) applies to all "telecommunications" without qualification.[84] Because "telecommunications" broadly includes all interstate and intrastate intercarrier traffic, the Commission "cannot, absent strong structural or contextual evidence, exclude from coverage certain items that clearly fall within the plain meaning of a statutory term."[85]

Furthermore, as the ICF and CTIA demonstrated, bill-and-keep is consistent with Section 252(d)(2), which requires the "mutual" recovery of costs, because both originating and terminating carriers have the same rights to recover their costs from their end users.[86] In fact, the statute expressly provides that Section 252(d)(2) "shall not be construed … to preclude arrangements that waive mutual recovery (such as bill-and-keep arrangements)."[87]

To the extent that the Commissions lacks authority to directly regulate intrastate intercarrier traffic, it should exercise its authority to preempt state regulation of intrastate access charges on the ground that it is impossible or impracticable to separate the interstate and intrastate components, and therefore that state regulation would frustrate implementation of a comprehensive federal regulatory framework.[88] Verizon and other commenters also support

[84] 47 U.S.C. § 251(b)(5).

[85] *USTA v. FCC*, 359 F.3d 554, 592 (D.C. Cir. 2004).

[86] CTIA Comments at 20-21; ICF Comments at 44-48.

[87] 47 U.S.C. § 252(d)(2)(B)(i).

[88] *See Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355 (1986); *see also Pub. Serv. Comm'n of Md. v. FCC*, 909 F. 2d 1510, 1516 (D.C. Cir. 1990) (upholding FCC preemption after finding that separation of interstate and intrastate services was "not practical," even though it may have been technically feasible); *Pub. Util. Comm'n of Tex. v. FCC*, 886 F.2d 1325, 1333 (D.C. Cir. 1989) (upholding FCC preemption where the FCC had found that "to avoid the impractical and inefficient result of requiring duplicate networks and equipment for interstate and intrastate use, federal interconnection policies must prevail for dual-use equipment and facilities"); *North Carolina Utils. Comm'n v. FCC*, 552 F.2d 1036, 1043 (4th Cir. 1977) (upholding FCC preemption after finding that separation of interstate and intrastate terminal

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preemption.[89] Additionally, Section 332(c)(3) authorizes the Commission to preempt state regulation of intrastate access charges to the extent that it affects "the entry of or rates charged by" CMRS providers.[90]

VII. WIRELESS PROVIDERS SHOULD NOT BE SUBJECTED TO LEGACY NETWORK INEFFICIENCIES

The Commission should reject attempts to unnecessarily handicap wireless carriers by: (1) affirming that ILECs must load wireless carrier numbers with different rating and routing points, (2) maintaining the intraMTA rule, and (3) acknowledging wireless service providers' dialing parity rights. Moreover, in the event that the Commission does not adopt a bill-and-keep reform proposal, wireless carriers should have the same opportunity as wireline carriers to recover access and other termination charges.

A. ILECs Refusal To Load Wireless Numbers With Different Routing And Rating Points Is Anticompetitive And Unlawful

More than three years ago Sprint sought the Commission's assistance in curbing incumbent carriers' anti-competitive behavior. The ILECs refused to load wireless numbers with different rating and routing points into their switches and route calls to those numbers.[91]

(Footnote continued from previous page.)

equipment is "a practical and economic impossibility" and that the proposed state rules "would have scuttled the federal interconnection policy"), *cert. denied*, 434 U.S. 874 (1977).

[89] *See* Verizon Comments at 35-38; USTA Comments at 24-31; BellSouth Comments at 36-38.

[90] *Iowa*, 120 F.3d at 800 n.21.

[91] Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, CC Docket No. 01-92 (May 9, 2002) ("Sprint Petition").

Multiple commenters point out that this behavior still continues, and that it greatly inhibits the ability of wireless carriers to compete effectively.[92] The Commission must act to prevent these longstanding market abuses from continuing to harm competition and consumers.

Wireline carriers fail to acknowledge that a wireless carrier's licensed service area often does not correspond with a wireline carrier's local calling area, but rather may overlap portions of the local calling areas of multiple wireline carriers. Wireless carriers typically route calls through a single ILEC tandem rather than directly interconnecting with each ILEC in order to provide their customers with local calling areas comparable to that of an ILEC.

Nevertheless, ILECs argue that an inefficient and discriminatory framework should be applied to the routing and rating of wireless calls. USTA would require wireless carriers obtaining a number within an ILEC rate center to designate a point-of-presence ("POP") in the ILEC's local serving area, effectively requiring those carriers to reproduce the networks of all ILECs.[93] Similarly, the Rural Alliance erroneously accuses wireless carriers of misusing the Local Exchange Routing Guide ("LERG") to dictate point-of-interconnection ("POI") locations, redefine distant toll tandems as local tandems, and shift costs to RLECs.[94] The Rural Alliance

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[92] *See* Sprint Comments at 17-19 (Sprint's ability to provide wireless services and compete directly with incumbent carriers in rural areas "is greatly inhibited because, absent the establishment of direct connections, many incumbents refuse to recognize the local telephone numbers Sprint has acquired…. Few residents of rural areas will consider Sprint's service if [they] must incur toll charges in calling a Sprint wireless customer who is located across the street."); Dobson Cellular and American Cellular Comments at 5-7 ("To compete with the ILECs, CMRS providers and CLECs must be able to provide local numbers in any ILEC rate center where their customers demand them; otherwise calls to their customers from the ILEC network will not be rated as local."); *see also* Western Wireless and Suncom Comments at 31-37; Allied Paging Comments at 3-5.

[93] USTA Comments at 33-34.

[94] Rural Alliance Comments at 132-35.

essentially asserts that routing and rating codes cannot be entered into the LERG that are not the result of direct negotiation and interconnection, which is wrong as a matter of law.

Wireless carriers have explained repeatedly that they have a legal right to obtain local numbers with different routing and rating points in each local calling area where they provide service, without interconnecting directly with the ILEC serving each local area.[95] It is often more efficient for wireless carriers to have telephone numbers with separate routing and rating points than it is to interconnect directly with each ILEC (thus replicating legacy wireline networks) or treat local calls as toll calls and pay access charges.[96] It is therefore perfectly lawful for wireless carriers to enter data into the LERG to reflect indirect interconnections.[97] Moreover, requiring wireless carriers to implement technologically and economically inefficient interconnection practices to require them to operate like wireline carriers is not competitively neutral and is contrary to Commission policy. It also will increase consumer rates.[98]

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[95] *See, e.g.,* CTIA Comments at 29-31; T-Mobile Comments at 40-43; Dobson Cellular and American Cellular Comments at 3-7; Western Wireless and Suncom Comments at 31-37; Sprint Reply Comments, CC Docket No. 01-92, DA No. 02-1740 (Aug. 19, 2002).

[96] CTIA Comments at 29-30; T-Mobile Comments at 40-41; Dobson Cellular and American Cellular Comments at 3-7; Western Wireless and Suncom Comments at 31-37.

[97] Only the Rural Alliance, alone among commenters, specifically asserts that wireless carriers are improperly entering rating and routing data into the LERG. The Rural Alliance noticeably fails to cite to any support that the LERG is to be used only for rating and routing of directly interconnected calls. The Rural Alliance also does not even attempt to counter industry guidelines that specifically recognize that the rating and routing points for a number may be different. *See, e.g.*, Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, § 6.2.2 (Feb. 4, 2005) ("Each switching center, each rate center and each POI may have unique V&H coordinates.").

[98] As T-Mobile previously noted, CMRS providers' use of disparate routing and rating points should not be confused with the "VNXX" issue, which also has been raised in this proceeding. *See* T-Mobile Comments at 41.

B. The IntraMTA Rule Ensures Equal Treatment For Wireless Carriers And Must Be Retained

To protect intermodal competition and the integrity of the wireless market, it is essential that the Commission retain and enforce the intraMTA rule[99] if it adopts an intercarrier compensation regime that requires carriers to distinguish between local and non-local traffic.[100] The Commission also should confirm that the rule applies to intraMTA traffic that passes through a transiting carrier.

The Commission recognized when it adopted the intraMTA rule that it was necessary to establish a particular wireless local service area for intercarrier compensation purposes because wireless service areas are federally-mandated, vary in size and do not match wireline service areas that are typically established by state regulators based upon wireline rate centers.[101] Those opposing the intraMTA rule recognize that the differences between wireline and wireless local calling areas is at the heart of the dispute regarding the appropriate compensation carriers should receive for transporting and terminating LEC-CMRS calls.[102]

Contrary to USTA's claim, the intraMTA rules does not "single out wireless carriers for different treatment."[103] Rather, the rule recognizes that wireline and wireless service areas differ, and ensures that wireless customers are not subject to toll charges for calls made within their

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[99] 47 C.F.R. § 51.701(b)(2).

[100] *See, e.g.,* Nextel Communications Comments at 30-31; Dobson Cellular and American Cellular Comments at 7-9; MetroPCS Comments at 22-24; Western Wireless and SunCom Wireless Comments at 30-31; U.S. Cellular Comments at 15.

[101] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16014 (1996) (subsequent history omitted).

[102] *See, e.g.,* Qwest Comments at 50-51; Rural Alliance Comments at 126-27.

[103] USTA Comments at 48.

carrier’s local service area (*i.e.*, the same benefits afforded to wireline-to-wireline calls). Opponents of the rule, however, suggest that this dispute be resolved by imposing wireline legacy inefficiencies on wireless carriers. For example, USTA and Qwest in effect argue that wireless carriers should modify all of their local calling areas to match those of wireline carriers. Even if it were technically feasible for wireless carriers to wholly reconfigure their networks, it would be extremely costly for them to do so.[104] Further, the local calling areas of wireline carriers are based upon landline technology, service areas and pricing practices, none of which tracks wireless networks.[105] The Rural Alliance also suggests that reciprocal compensation applies only to a LEC originated call that originates and is routed to a wireless carrier through a POI within a wireline local calling area.[106] In effect, the Rural Alliance’s proposal requires the local calling areas of wireless carriers to match that of wireline carriers and that wireless carriers assume the legacy inefficacies that characterize wireline networks.

Furthermore, the Commission should retain the intraMTA rule because wireless carriers do not collect access charges for the termination of any calls, even though wireline carriers collect both reciprocal compensation and access charges.[107] Eliminating the intraMTA rule would require wireless carriers to shrink the size of their local calling areas, which would also decrease the wireless carriers’ reciprocal compensation revenues. Wireline carriers, however, would still be able to recover both access charges and reciprocal compensation. Thus, wireless

[104] MetroPCS Comments at 23.

[105] Nextel Communications Comments at 30; Dobson Cellular and American Cellular Comments at 9; U.S. Cellular Comments at 15.

[106] Rural Alliance Comments at 127; *see also* California LEC Comments at 6.

[107] Western Wireless and SunCom Wireless Comments at 31.

carriers would be competitively disadvantaged if the intraMTA rule were eliminated. Accordingly, it is imperative that the intraMTA rule be retained if the Commission does not adopt a bill-and-keep regime. If a bill-and-keep regime is not adopted or the intraMTA rule maintained, as discussed below, wireless carriers should be able to recover access charges so that they are on an equal competitive footing with wireline carriers.

Contrary to JSI's contentions, the intraMTA rule applies to LEC-CMRS calls that originate and terminate within an MTA even if a LEC transits the calls through an IXC.[108] In fact, the U.S. Court of Appeals for the Tenth Circuit held that the rule unambiguously imposes upon RLECs "a mandatory duty to establish reciprocal compensation agreements with the CMRS providers ... for calls originating and terminating within the same MTA."[109] The court further found that the rule "on its face admits of no exceptions" and does not support the "[RLEC] contention that reciprocal al compensation requirements do no apply when traffic is transported on an IXC network."[110] Other federal courts that have addressed this issue have reached the same result as the Tenth Circuit Court.[111]

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[108] JSI Comments at 24-25.

[109] *Atlas Tel. Co. v. Oklahoma Corp. Comm'n*, 400 F.3d 1256, 1264 (10th Cir. 2005).

[110] *Id.*

[111] *See, e.g., Atlas Tel. Co.* v. *Oklahoma Corp. Comm'n*, 309 F. Supp. 2d 1299, 1309-10 (W.D. Ok. 2004)("The court also agrees with the wireless providers that "[This] [RLEC] argument is directly contradictory to FCC rule 51.701(b). . . . The court concludes that the Oklahoma Corporation Commission did not err when it ruled that reciprocal compensation obligations apply to *all calls* originated by an RTC and terminated by a wireless provider within the same major trading area, *without regard to whether those calls are delivered via an intermediate carrier*.")(emphasis added); *WWC License v. Boyle*, No. 4:03CV3393, slip op. at 5-6 (D. Neb., Jan. 20, 2005) ("Under this [FCC] rule, reciprocal compensation obligations apply to *all calls* originated by Great Plans and terminated by Western Wireless within the same MTA, *regardless of whether the calls are delivered via an intermediate carrier such as Qwest*. . . . Therefore, this Court directs that the agreement between Great Plains and Western Wireless be

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RLECs are not precluded from transiting traffic through IXCs and recovering access charges as a result. RLECs, however, also must satisfy their obligations to compensate wireless terminating carriers for intraMTA calls. If the Commission does not enforce this obligation and affirm that the obligation includes transiting an intraMTA call through an IXC, it will validate LECs' unilateral attempts to rewrite the intraMTA rule to avoid their legal obligation to pay reciprocal compensation for the termination of all intraMTA LEC-CMRS traffic. It also would undercut the right of wireless carriers to indirectly interconnect under Section 251(a) of the Act. Adopting a bill-and-keep intercarrier compensation regime effectively would moot the on-going disputes regarding application of the intraMTA rule by eliminating anachronistic and arbitrary jurisdictional distinctions and substituting a regime that rewards efficiency and competition.

C. Wireline Carriers Must Recognize Wireless Carriers' Dialing Parity Rights

Nextel Partners correctly observes that many RLECs refuse to provide wireless carriers with local dialing parity, despite the fact that they are obligated to do so under statute and Commission regulation.[112] In those cases, the RLEC engineers its network so that calls to a wireless carrier's customers require the dialing of extra digits and most typically the assessment of toll charges to the call, even when the rate center of the calling party and the called party is the same. Refusing to comply with these obligations impedes wireless carriers' ability to effectively compete against their wireline counterparts.

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modified to reflect that reciprocal compensation obligations apply to *all calls* originated by Great Plains and terminated by Western Wireless within the same MTA.")(emphasis added).

[112] Nextel Partners Comments at 14-17.

Pursuant to Section 251(b)(3) of the Act and Section 51.207 of the Commission's rules, LECs must provide local dialing parity to competitive providers of telephone exchange services.[113] Refusing to acknowledge that the Commission long ago held that wireless carriers are entitled to dialing parity,[114] some RLECs assert that dialing parity is available only if there is a direct interconnection arrangement between the wireline and wireless carriers. As a result, wireless carriers often must enter into unfavorable interconnection agreements if they want to effectively compete in the wireline carriers' markets. Neither the Act nor the Commission conditions dialing parity on the existence of an interconnection agreement.[115] Since the inception of the wireless industry more than 20 years ago, wireless carriers have interconnected with RLECs indirectly, using Type 2A interconnection.[116] In the Telecommunications Act of 1996, Congress confirmed that competitive carriers have the right to connect indirectly with other networks.[117] Accordingly, the Commission must reaffirm that LECs must provide local dialing parity to wireless carriers within the wireless carriers' local calling areas and that interconnection agreements are not prerequisites for dialing parity.

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[113] 47 U.S.C. § 251(b)(3); 47 C.F.R. § 51.207.

[114] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order, 11 FCC Rcd 19392, 19427-29 (1996) (subsequent history omitted).

[115] *See TSR Wireless, LLC v. US WEST Communications, Inc.*, 15 FCC Rcd 11166 (2000) (concluding that the Commission's interconnection pricing rules can be applied to wireless traffic under Section 332 of the Act and thus do not require a interconnection agreement pursuant to Section 252 of the Act), *aff'd Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

[116] With Type 2A, a wireless carrier can "establish intra-LATA connections to BOC end offices connected to the tandem *and to other carriers interconnected through the tandem.*" Bell Communications Research, Notes on the BOC Intra-LATA Networks, TR-NPL-000275, at 16-2, § 2.03 and Figure 16-1 (Apr. 1986)(emphasis added).

[117] *See* 47 U.S.C. § 251(a)(1).

D. Wireless Carriers Should Have the Same Opportunity To Recover Access And Termination Charges As Wireline Carriers

Adoption of a bill-and-keep regime would eliminate call origination and termination charges, and thus moot the issue of whether wireless carriers can impose access charges on IXCs for originating or terminating long distance traffic on their wireless networks. If the Commission does not implement a bill-and-keep intercarrier compensation solution, it must ensure that wireless carriers have the same opportunity that wireline carriers have to collect access and termination charges.[118] Wireline service providers should not continue to collect termination charges from competitors while wireless service providers are denied equivalent compensation for equivalent functions. Sprint accurately notes that true intermodal competition cannot be achieved if ILECs can set retail rates at lower levels because they receive revenues from other carriers, but wireless carriers are denied the same opportunity.[119]

VIII. CONCLUSION

Based upon the foregoing, T-Mobile urges the Commission to establish expeditiously a unified, default bill-and-keep system, along with neutral default interconnection rules. T-Mobile further urges the Commission to consolidate the various disparate universal service programs into a unified high-cost fund that is not used as a revenue guarantee mechanism and that is based upon the forward-looking costs of the most efficient technology available in each high-cost area.

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[118] CTIA Comments at 18; Sprint Comments at 21-22; *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* Notice of Proposed Rulemaking, 11 FCC Rcd 5020 (1996) ("*CMRS Access Charge NPRM*"). The Commission tentatively concluded that CMRS carriers could recover access charges, but it never adopted a final decision in that proceeding.

[119] *See* Sprint Comments at 22.

These measures will provide meaningful reform of the existing dysfunctional intercarrier compensation and universal service systems, allowing consumers to benefit from the resulting increase in competition and efficiency.

Respectfully submitted,

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